BOOK REVIEWS

HAND BOOK ON THE LAW OF EVIDENCE, BASED UPON THE MODERN LAW OF EVIDENCE BY CHARLES FREDERICK CHAMBERLAYNE. By Arthur W. Blakemore and DeWitt C. Moore, of Boston and New York respectively. Albany: Matthew Bender & Company, 1919; pp. xxxiv, 1024.

The lawyer who, for the last two decades has kept abreast of the literature of the law, is appreciative of the fact that no branch of the old law has received such scientific and scholarly treatment, as has the law of evidence, and few of the more modern fields have been as thoroughly and intelligently cultivated. Led by Professor Thayer in that incomparable series of essays gathered under one title in his "Preliminary Treatise on Evidence at the Common Law," followed by Professor Wigmore with his edition of Greenleaf's first volume, and later by his great work "Evidence in Trials at Common Law," and this work of Professor Wigmore followed in turn by the exhaustive treatise of Mr. Chamberlayne who had previously given us the best American editions of both Taylor and Best, we are driven to acknowledge the field well tilled, even had no others been working in it. It is to be recognized however, that others have during this period done work of real practical value though, it may be, not possessing the same degree of scientific merit.

As was to be expected, with treatment so exhaustive and so competently done as that in Chamberlayne's "Modern Law of Evidence," an abridgment in some form was certain to be forth-coming, as making the work less physically cumbersome for that practical use for which a text on the law of evidence is so often demanded by the trial lawyer.

It is to be observed in the outset that the cover title has a tendency to mislead. It is not "Chamberlayne's Hand Book on Evidence" but rather that of Blackmore and Moore. The reviewer is convinced that the editors of this "Hand Book" have produced a useful aid to the trial lawyer, but cannot escape the conclusion that the work lacks that clearness, literary finish and to some extent, accuracy of statement sure to have been found in it, had the work been done by the author of the original treatise. While in any abridgment literary style must in a measure be sacrificed, it is almost certain to suffer more at the hands of another than at the hands of the author himself. From the author's discussion of the principles involved in that "no man's land" between fact and opinion, the editors have taken this sentence: "Modern judicial administration recognizes that the spontaneous intuitive action of the mind, approving as it does, the uniformity of nature, is far more trustworthy than an act of volitional reasoning, subject to variations in operation which attend moral uniformity." (p. 515). This sentence in its original setting is illuminating, but in its isolation in the "Hand Book" lacks something of clarity and has little to help him who seeks information. It illustrates the difficulties of the abridger, particularly of him who attempts this service for

another, and who of necessity must lack in some measure a full appreciation of that other's point of view.

No one is always right, but it is quite certain that the author would not have fallen into such an error as have the editors in their discussion of what they are pleased to call the "pseudo-presumption of good character." They say: "It is a familiar rule of procedure, elsewhere considered, that unless, or until, the accused in a criminal case shall open the issue of character, no inference shall be drawn that he did the act in question because he had the traits of character which would permit or predispose him to do it." (§ 476.) The logical inference from such a statement is, that when the defendant has introduced evidence of his claimed good character, then the state may give evidence of his claimed bad character *as a basis for the inference* "that he did the act in question because he had traits of character which would permit or predispose him to do it." No principle is better settled in the law of evidence than that such use cannot, save in one or two quite exceptional cases, be made of the evidence of bad character. One might look for this error to be corrected in the more general discussion of the evidentiary use of character in the subsequent section referred to, (§ 1029), but the correction is not found, the error, on the contrary is perpetuated.

But these illustrations are not typical of *many* errors in either the exercise of judgment in the abridging process, or in the statement of the law. They are rather illustrative of *some* errors more likely to appear where the abridging process is worked out by a stranger. It is seldom true that the literary forms of two authors run well together, and they are certain to differ much in their measures of substantive values.

It would be difficult to speak too extravagently of the work abridged, and the abridgment will be welcomed by the profession as a useful book, notwithstanding it enters a field far from barren before it appeared.

The book is printed on thin paper in large type and with flexible cover, too large for the pocket but convenient to handle. V. H. LANE.

THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW. A Contribution to the History and Theory of Juristic Persons in Anglo-American Law. By Gerard Carl Henderson, A.B., LL.B. Harvard Studies in Jurisprudence, II. Cambridge, University Press. London: Humphrey Milford, Oxford University Press; 1918. pp. xix, 199.

This is an illuminating and discriminating discussion and criticism of the American decisions,—mostly Federal,—upon many of the perplexing problems arising under the United States Constitution, when a corporation of one state claims rights in another state.

The constitutional provisions involved are: "Congress shall have power to regulate commerce among the several states" (Art. I, § 8, cl. 3); "The judicial power shall extend to controversies between citizens of different states" (Art. III, § 2); "The citizens of each state shall be entitled to all